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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Case No. C-07-2214 JF

Plaintiff,

vs.

NANCY R. HEINEN,

Defendant.

**[PROPOSED] FINAL JUDGMENT AS TO
NANCY R. HEINEN**

The Securities and Exchange Commission (“Commission”) having filed an Amended Complaint in this action (Docket Item 11) and Defendant Nancy R. Heinen (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Amended Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or

1 participation with them who receive actual notice of this Final Judgment by personal service or
2 otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities
3 Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the
4 use of any means or instruments of transportation or communication in interstate commerce or
5 by use of the mails, directly or indirectly:

- 6 (a) to employ any device, scheme, or artifice to defraud;
- 7 (b) to obtain money or property by means of any untrue statement of a material fact
8 or any omission of a material fact necessary in order to make the statements
9 made, in light of the circumstances under which they were made, not misleading;
10 or
11 (c) to engage in any transaction, practice, or course of business which operates or
12 would operate as a fraud or deceit upon the purchaser.

13 II.

14 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
15 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
16 participation with them who receive actual notice of this Final Judgment by personal service or
17 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
18 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and
19 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of
20 interstate commerce, or of the mails, or of any facility of any national securities exchange, in
21 connection with the purchase or sale of any security:

- 22 (a) to employ any device, scheme, or artifice to defraud;

1 (b) to make any untrue statement of a material fact or to omit to state a material fact
2 necessary in order to make the statements made, in the light of the circumstances
3 under which they were made, not misleading; or
4
5 (c) to engage in any act, practice, or course of business which operates or would operate
6 as a fraud or deceit upon any person.

7 III.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and
9 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
10 participation with them who receive actual notice of this Final Judgment by personal service or
11 otherwise are permanently restrained and enjoined from aiding and abetting any violation of
12 Section 13(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78m(a)]
13 and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-
14 1] by knowingly providing substantial assistance to an issuer which has a class of securities
15 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] in failing to file with the
16 Commission such accurate and complete information, reports, and documents as are required to
17 be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. §
18 78m(a)] and the Rules thereunder, including but not limited to, quarterly reports on Form 10-Q
19 [17 C.F.R. § 249.308a] as prescribed by Exchange Act Rule 13a-13 [17 C.F.R. § 240.13a-13],
20 annual reports on Form 10-K [17 C.F.R. § 249.308] as prescribed by Exchange Act Rule 13a-1
21 [17 C.F.R. § 240.13a-1], such information and documents to contain, in addition to such
22 information as is expressly required to be included in a statement or report to the Commission,
23 such further material information, if any, as may be necessary to make the required statements, in
24 the light of the circumstances under which they are made, not misleading, as prescribed by
25 Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-20].
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1 IV.
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3 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
4 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
5 participation with them who receive actual notice of this Final Judgment by personal service or
6 otherwise are permanently restrained and enjoined from aiding and abetting any violation of
7 Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], by knowingly providing
8 substantial assistance to any issuer which has a class of securities registered pursuant to Section
9 12 of the Exchange Act [15 U.S.C. § 78l] or is required to file reports pursuant to Section 15(d)
10 of the Exchange Act [15 U.S.C. § 78o] in failing to make and keep books, records and accounts
11 which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the
12 assets of the issuer.

13 V.
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15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and
16 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
17 participation with them who receive actual notice of this Final Judgment by personal service or
18 otherwise are permanently restrained and enjoined from aiding and abetting any violation of
19 Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by knowingly providing
20 substantial assistance to any issuer which has a class of securities registered pursuant to Section
21 12 of the Exchange Act [15 U.S.C. § 78l] or is required to file reports pursuant to Section 15(d)
22 of the Exchange Act [15 U.S.C. § 78o] in failing to devise and maintain a system of internal
23 accounting controls sufficient to provide reasonable assurances that:

24 A. transactions are executed in accordance with management's general or
25 specific authorization;

B. transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets;

C. access to assets is permitted only in accordance with management's general or specific authorization; and

D. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing a system of internal accounting, or knowingly falsifying any book, record, or account described in Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2] by making or causing to be made a materially false or misleading statement, or by omitting to state or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with: (a) any audit, review or examination of the financial statements of an issuer required to be made pursuant to the federal securities laws; or (b) the preparation or filing of any document or report required to be filed with the Commission pursuant to the federal securities laws or otherwise.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 promulgated thereunder [17 C.F.R. § 240.14a-9] by making or causing to be made solicitations by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it was made, is false or misleading with respect to any material fact, or which omits to state any material fact that is necessary: (a) in order to make the statements therein not false or misleading; or (b) in

1 order to correct any statement in any earlier communication with respect to the solicitation of a
 2 proxy for the same meeting or subject matter which has become false or misleading.

3 X.
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5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and
 6 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
 7 participation with them who receive actual notice of this Final Judgment by personal service or
 8 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
 9 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 C.F.R. § 240.16a-3]
 10 thereunder, by failing, as an officer, director or beneficial owner of more than ten percent of any
 11 class of equity security registered pursuant to Exchange Act Section 12 [15 U.S.C. § 78l], to file
 12 periodic reports disclosing any change of beneficial ownership of those securities.

13 XI.
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15 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section
 16 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15
 17 U.S.C. § 78u(d)(2)], Defendant is prohibited for five (5) years following the date of entry of this
 18 Final Judgment, from acting as an officer or director of any issuer that has a class of securities
 19 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or is required to file
 20 reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

21 XII.
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23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable
 24 for disgorgement of \$1,575,000, representing profits gained as a result of the conduct alleged in
 25 the Amended Complaint, together with prejudgment interest thereon in the amount of
 26 \$400,219.78, and a civil penalty in the amount of \$200,000 pursuant to Section 20(d)(2) of the
 27 Securities Act [15 U.S.C. § 77t(d)(2)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §
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1 78u(d)(3)]. Defendant shall satisfy this obligation by paying a total of \$2,175,219.78 within ten
2 (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or
3 United States postal money order payable to the Securities and Exchange Commission. The
4 payment shall be delivered or mailed to the Office of Financial Management, Securities and
5 Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3,
6 Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Nancy R. Heinen as
7 a defendant in this action; setting forth the title and civil action number of this action and the
8 name of this Court; and specifying that payment is made pursuant to this Final Judgment.
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10 Defendant shall simultaneously transmit photocopies of such payment and letter to the attention
11 of Marc J. Fagel, Regional Administrator, at the Commission's San Francisco Regional Office,
12 44 Montgomery Street, Suite 2600, San Francisco, CA 94104. Defendant shall pay post-
13 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission
14 shall remit the funds paid pursuant to this paragraph to the United States Treasury.
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16 XIII.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Nancy
18 R. Heinen to Entry of Final Judgment, filed concurrently, is incorporated herein with the same
19 force and effect as if fully set forth herein, and that Defendant shall comply with all of the
20 undertakings and agreements set forth therein.
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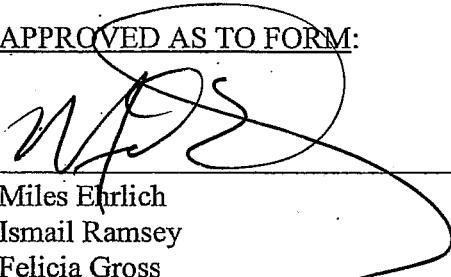
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1 XIV.
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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: 8/22/08


UNITED STATES DISTRICT JUDGE

10 APPROVED AS TO FORM:
11 
12 Miles Ehrlich
13 Ismail Ramsey
14 Felicia Gross

15 Ramsey & Ehrlich LLP
16 803 Hearst Avenue
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18 (510) 548-3600
19 Attorneys for Defendant NANCY R. HEINEN

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SUBMITTED BY:

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SECURITIES AND EXCHANGE COMMISSION